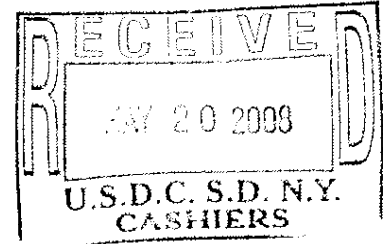


**JUDGE GRIESA****08 CV 4705**

EDUCATIONAL CREDIT  
MANAGEMENT CORPORATION

Civil Case No.

Plaintiff,

v.

## COMPLAINT

DARRICK E. ANTELL, M.D., D.D.S., P.C.

Defendant.

NOW COMES Plaintiff, Educational Credit Management Corporation ("ECMC"), seeking relief against Darrick E. Antell, MD, DDS, PC (the "Defendant"), and alleging as follows:

### PARTIES

1. ECMC is a private, non-profit Minnesota corporation and guaranty agency and, pursuant to 20 U.S.C. § 1095a and 34 C.F.R. § 682.410 (b)(9), has the authority to pursue this lawsuit.

2. Upon information and belief, the Defendant is a New York corporation located at 850 Park Avenue, New York, New York.

### JURISDICTION

3. This Court has jurisdiction to hear this Complaint pursuant to 28 U.S.C. § 1331, as a civil action arising under 20 U.S.C. § 1095a(a)(6) and 34 C.F.R. § 682.410(b)(9)(i)(F).

### VENUE

4. Because the Defendant is a corporation residing in New York County, New York, venue for this action is proper in the Southern District of New York, pursuant to 28 U.S.C. § 1391(c).

### FACTUAL ALLEGATIONS

5. Under Title IV, Part B, of the Higher Education Act of 1965 (HEA), Congress enacted a program in which the federal government encouraged the making of loans by private lenders to finance eligible students' post-secondary education. See 20 U.S.C. §§ 1071(a),

of the loan if the student defaults. See 20 U.S.C. § 1078(a),(c). This program is presently known as the Federal Family Education Loan Program (FFELP).

6. To assist the Secretary in implementing and operating the FFELP, the HEA provides that the Secretary may enter into agreements with guaranty agencies. See 20 U.S.C. §1085(j). A guaranty agency guarantees payment of a loan made by an eligible lender and pays the holder of the loan if the student defaults. The Secretary thereafter reimburses the guaranty agency for all or part of these payments under a re-insurance agreement with the agency. See 20 U.S.C. § 1078(c). Guaranty agencies also receive funds to administer the FFELP on behalf of the Secretary, including collecting defaulted student loans for which the guaranty agency has paid the holder and received reimbursement from the Secretary. See 20 U.S.C. § 1078(c)(2). When a guaranty agency collects money on a defaulted student loan, it sends the majority of the money to the Secretary and retains a portion to defray costs of collection. See 20 U.S.C. § 1078(c)(2)(D).

7. To assist the Secretary and the guaranty agencies in collecting defaulted student loans, Congress gave guaranty agencies the authority to administratively issue orders to defaulted borrowers' employers requiring them to withhold up to fifteen percent (15%) of the disposable income of these borrowers. See 20 U.S.C. § 1095a. This section explicitly preempts state laws and sets forth procedures for providing students with due process, including prior notice of the agency's intent to withhold, a hearing if requested, and the issuance of a Withholding Order. See 20 U.S.C. § 1095a(a), (b); 34 C.F.R. § 682.410(b)(9). This section also provides that guaranty agencies may sue employers who do not deduct and pay over as directed in the Withholding Order. See 20 U.S.C. § 1095(a)(6); 34 C.F.R. § 682.410(b)(9)(i)(F).

8. ECMC is a guaranty agency under the FFELP.

9. Brenda Bergen (the "Borrower") owes a student loan debt to ECMC that is in default.

10. On February 14, 2007, ECMC served Borrower with the required thirty (30) day Notice Prior To Wage Withholding. A true and correct copy of the Notice is attached as Exhibit A.

11. Because no hearing was requested under 20 U.S.C. § 1095a(a)(5)(b), ECMC issued an Order of Withholding From Earnings (the "Withholding Order") on May 1, 2007. A true and correct copy of the Withholding Order is attached as Exhibit B.

12. Defendant did not remit any of the Borrower's wages in accordance with the Withholding Order. Therefore, ECMC sent Defendant a Second Notice of Order of Withholding From Earnings on June 25, 2007, requesting compliance with the Withholding Order. A true and correct copy of the Second Notice is attached as Exhibit C.

13. Defendant did not remit any of the Borrower's wages in accordance with the Withholding Order. Therefore, ECMC sent Defendant correspondence dated February 5, 2008

respond to the February Letter or remit payment to ECMC.

14. Defendant has, at all relevant times, refused to comply with the Withholding Order.

### **FIRST COUNT**

#### **VIOLATION OF 20 U.S.C. § 1095a**

15. Based on the foregoing, Defendant is in violation of 20 U.S.C. § 1095a, which provides that guaranty agencies, such as ECMC, may administratively garnish up to fifteen percent (15%) of the disposable earnings of defaulted student loan borrowers by issuing a Withholding Order to the borrower's employer.

16. Because Defendant has failed to comply with the Withholding Order, Defendant, pursuant to 20 U.S.C. § 1095a(a)(6), is liable for any and all amounts it failed to withhold following receipt of the Withholding Order.

17. The amount due to ECMC is fifteen percent (15%) of Borrower's disposable earnings, or such lesser amount, as required by 15 U.S.C. § 1673, from the date of Defendant's receipt of the Withholding Order to the date Borrower ceases to be employed by Defendant or the date this court enters judgment.

18. Pursuant to 20 U.S.C. § 1095a(a)(6), ECMC is entitled to its' attorneys' fees and costs associated with pursuing this action and, in the court's discretion, punitive damages.

### **SECOND COUNT**

#### **INJUNCTION**

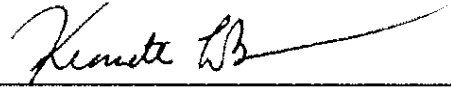
19. Based on Defendant's continuing refusal to comply with the terms of the Withholding Order, ECMC seeks a mandatory injunction requiring Defendant to withhold and remit fifteen percent (15%) of Borrower's disposable earnings, or the amount required under 15 U.S.C. § 1673, if less, until Borrower's student loan debt is paid in full or Borrower terminates his/her employment with Defendant, whichever occurs earlier.

20. ECMC does not have an adequate remedy at law to prevent the multiplicity of lawsuits that would result from a continuing violation of 20 U.S.C. § 1095a by Defendant and, thus, is entitled to injunctive relief in addition to damages for Defendant's past violations.

1. An injunction requiring the appropriate amount of money to be withheld from Borrower's wages and remitted to ECMC until Borrower's defaulted student loan debt is either paid in full or he/she no longer works for Defendant;
2. Damages in the amount that Defendant should have withheld from Borrower's wages;
3. Attorneys' fees and costs;
4. Punitive damages;
5. Pre and post-judgment interest on this amount, as allowed by law; and,
6. Such other relief as the Court deems appropriate.

Dated: May \_\_, 2008

COLE, SCHOTZ, MEISEL,  
FORMAN & LEONARD, P.A.  
Attorneys for Plaintiff, Educational Credit  
Management Corporation

By:   
Kenneth L. Baum  
900 Third Avenue  
New York, New York 10022  
(212) 752-8000

BRENDA BERGEN  
9801 67TH AVE APT 3F  
REGO PARK, NY 11374-4902



130-48-6762

RE: Defaulted Student Loan(s)  
SSN: XXX-XX-6762  
EMPLOYER: DARRICK E. ANTELL, MD, DDS, PC  
TOTAL AMOUNT CURRENTLY OWING: \$ 198,356.84  
(This amount includes principal, interest and projected collection costs.)

### NOTICE PRIOR TO WAGE WITHHOLDING

You are given notice that Educational Credit Management Corporation (ECMC), pursuant to Federal Law (Public Law 102-164, as amended by Public Law 109-171; 20 U.S.C. § 1095a et seq.), will order your employer to immediately withhold money from your pay (a process known as "wage garnishment") for payment of your defaulted student loan(s) unless you take the action set forth in this Notice.

You must establish a written repayment agreement with ECMC within thirty (30) days of the date of this Notice. Otherwise, ECMC will proceed to collect this debt through deductions from your pay.

Unless you act within thirty (30) days of the date of this Notice, your employer will be ordered to deduct from your wages an amount equal to no more than fifteen percent (15%) of your disposable pay for each pay period, or the amount permitted by 15 U.S.C. 1673 (unless you give ECMC written consent to deduct a greater amount) to repay your student loan(s) held by ECMC.

Disposable pay includes pay remaining after all deductions required by law have been withheld (such as social security, federal and state income taxes). Your employer will be ordered to deduct this amount no later than the first pay period which occurs after the date on which the Order of Withholding was issued, and will be ordered to deduct this amount each time you are paid until your debt is paid in full. **This is an attempt to collect a debt. Any information obtained will be used for that purpose.**



**You have the right to request a hearing:**

**How to request a hearing:**

Complete the enclosed form and return it to ECMC within fifteen (15) days of the date of this Notice. Mail your Request for Hearing or Exemption to ECMC at the address provided on the enclosed form. Please state on your envelope "Wage Withholding Appeal Enclosed". The hearing will be a review of your written statement on the enclosed Request for Hearing or Exemption and all relevant documents unless you specifically request an in-person or telephone hearing. We will let you know if your hearing request has been granted or denied. If the request is granted, we will advise you when, where and how your hearing will be held.

If you miss this deadline, you may still be entitled to a hearing, but the hearing will not take place prior to the issuance of an Order of Withholding to your employer. You may not make your request a hearing by telephone.

**Your hearing may take place in one of three ways:**

- In writing: By delivering your written statement and supporting documentation to ECMC. ECMC will then submit these documents along with our own documents to an independent hearing officer who will decide whether or not your debt is subject to wage withholding;
- By telephone: A conference call will be set up between you, ECMC, and the hearing officer;
- In person: If you request a hearing in person, it will be held in Chicago, IL and you must pay your own expenses to appear at this hearing.

**The following are considered valid reasons for requesting a hearing:**

- You dispute the existence of this debt. If, for example, you believe this debt has been paid, please enclose any proof you have that the debt has been paid in full along with your Request for Hearing or Exemption. If you are not the person owing this debt, please refer to the section below, which addresses that situation.
- You dispute the amount of this debt.
- Making installment payments in the amount equal 15% of your disposable pay, or having payments in that amount withheld from your disposable pay would constitute an extreme financial hardship.

**The following are not considered valid reasons for requesting a hearing:**

- The school you attended was unsatisfactory.
- You were unable to obtain employment in the field for which the school prepared you.

**You Have the Following Rights:**

You have an opportunity to inspect and/or request copies of ECMC's records relating to your debt. Basic information about your debt will be provided free of charge along with our response to your hearing request. All requests for documentation must be in writing. Telephone requests will not be honored. **Please note that a request for documents, by itself, will not prevent garnishment of your wages.**

You have the opportunity to avoid wage garnishment by immediately remitting the balance in full or by entering into a written repayment agreement with ECMC to establish a satisfactory schedule for the repayment of this debt. To obtain information on entering into a repayment agreement, call ECMC at 1-800-780-7997, or (651) 221-0037, e-mail: [collections@ecmc.org](mailto:collections@ecmc.org) or WebSite: [www.ecmc.org](http://www.ecmc.org).

An employer may not discharge you, refuse to employ you, or take disciplinary action against you because your wages are withheld for payment of a defaulted student loan. If an employer takes any of these actions, you may sue that employer in a state or federal court for reinstatement, back pay, attorney's fees, and punitive damages.

If you document that you have been involuntarily separated from employment, ECMC will not withhold wages until you have been re-employed continuously for twelve (12) months. If you wish to claim this exemption from wage withholding, you need to fill in the Request for Hearing and Exemption and send us written proof of the following: Documents from the state employment commission (or similar agency) indicating your entitlement to unemployment compensation and a statement from your present employer indicating the date you began work at your present job.

No more than fifteen percent (15%) of your "disposable pay" or the amount permitted by 15 U.S.C. 1673 may be deducted from your wages to repay your student loan(s). "Disposable pay" is those wages remaining after all deductions required by law have been withheld (such as Social Security, federal and state income taxes).

Any defect in this Notice will not be considered waived unless each alleged defect or ambiguity you believe the Notice contains is set forth in writing.

**If you are not the person who owes this debt:**

Please notify us immediately upon your receipt of this Notice so that your wages will not be withheld. You may call us at 1-800-780-7997 or (651) 221-0037 to notify us, but you should also send a copy of your Social Security card, or other identifying documentation for verification purposes. Correspondence for this purpose should be mailed to:

**Educational Credit Management Corporation (ECMC)**  
Attention: Wage Withholding Administrator  
101 East 5th Street, Suite 2400  
St. Paul, MN 55101

**EDUCATIONAL CREDIT MANAGEMENT CORPORATION**



DARRICK E ANTELL MD DDS PC  
ATTN PAYROLL  
850 PARK AVE  
NEW YORK NY 10021

**ECMC**  
EDUCATIONAL CREDIT  
MANAGEMENT CORPORATION

ECMC is an ECMC Group company

RE Student Loan Debt

**ORDER OF WITHHOLDING FROM EARNINGS**

Pursuant to authority granted Educational Credit Management Corporation (ECMC) by Federal Law (Public Law 102-164, as amended by Public Law 109-171, 20 U S C '1095a et seq ), you, the employer of the debtor named below, are hereby ordered and directed to withhold income from the debtor's disposable pay from this employment for payment of defaulted student loan(s) as follows

DEBTOR **BRENDA BERGEN**  
9801 67<sup>TH</sup> AVE APT 3F  
REGO PARK NY 11374

SSN 130 48 6762

**Total Amount Currently Due \$199633 19**

The employer shall deduct and pay to ECMC an amount that does not exceed fifteen percent (15%) of the debtor's disposable pay for each pay period or the amount permitted by 15 U S C '1673, unless the debtor provides ECMC with written consent to deduct a greater amount. This amount shall be deducted until the amount set for above as the "Total Amount Currently Due", \*\*plus all further accrued interest, is fully paid

As the employer, you must comply with this law, which supersedes all state laws governing wage garnishment. Garnishment must begin on the first pay period following the receipt of this notice. You must respond to this notice by completing and returning the enclosed form to our office within ten (10) business days. If the employee is no longer employed by you, please indicate that on the form.

Employer is directed to pay all amounts withheld on each regular pay day, no less frequently than once each month, to

ECMC  
Lockbox #7096  
P O. BOX 75848  
ST PAUL, MN 55175-0848

ECMC Federal Tax I D # 41-1778617

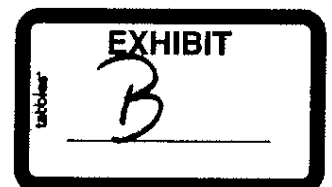
All payments **MUST** identify the debtor and the debtor's social security number

Section 488A of the Act provides that an employer who fails to comply with a garnishment order issued under this law will be liable for any amounts that are not so withheld following its receipt, in addition to costs of suit as a result of legal action authorized under the law

**THIS ORDER OF WITHHOLDING IS ISSUED ON May 1, 2007**

**EDUCATIONAL CREDIT MANAGEMENT CORPORATION**

**AWG**





If you fail to comply with this Order, ECMC may sue you in a state or federal court to recover any amount that you failed to withhold, as well as attorney fees, litigation costs, and at the court's discretion, punitive damages.

In the event employment is terminated, you, as the employer, are required to complete and forward a **Notice of Change of Employment** to our office.

If you have any questions regarding this matter, please call 1-800-780-7997 or (651) 221-0037. Please make all payments payable to ECMC and include the Social Security number of the employee on the payment.

Send all amounts withheld on each regular payday, no less frequently than once a month, to:

ECMC  
Lockbox #7096  
P.O. BOX 75848  
ST. PAUL, MN 55175-0848

Federal Tax I.D. #: 41-1778617

**EDUCATIONAL CREDIT MANAGEMENT CORPORATION**

Enclosures: Employer Acknowledgment of Wage Withholding  
Department of Education Letter listing Guarantors authorized to issue  
Wage Garnishment Withholding Orders  
Handbook for Employers  
Self-addressed and stamped envelope



**Union Center Plaza  
Washington, D.C. 20202**

The following organizations have agreements with the U.S. Department of Education to participate in the Federal Family Education Loan (FFEL) Program as guaranty agencies under Section 428(b) of the Higher Education Act of 1965, as amended (HEA). The guaranty agencies on this list are authorized by section 488A of the HEA, to issue administrative wage garnishment withholding orders at a rate of 15% to employers, to recover FFEL debts owed by individuals who have defaulted on their student loan repayment obligations. This authority does not apply to Federal agencies or their employees.

AMERICAN STUDENT ASSISTANCE (MASSACHUSETTS)  
STUDENT LOAN GUARANTEE FOUNDATION OF ARKANSAS  
CALIFORNIA STUDENT AID COMMISSION  
COLORADO STUDENT LOAN PROGRAM  
CONNECTICUT STUDENT LOAN FOUNDATION  
EDUCATION ASSISTANCE CORPORATION (SOUTH DAKOTA)  
EDUCATIONAL CREDIT MANAGEMENT CORPORATION  
FLORIDA DEPARTMENT OF EDUCATION/OFFICE OF STUDENT FINANCIAL ASSISTANCE  
GEORGIA HIGHER EDUCATION ASSISTANCE FOUNDATION  
GREAT LAKES HIGHER EDUCATION CORPORATION (WI)  
ILLINOIS STUDENT ASSISTANCE COMMISSION  
IOWA COLLEGE STUDENT AID COMMISSION  
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
LOUISIANA OFFICE OF STUDENT FINANCIAL ASSISTANCE  
FINANCE AUTHORITY OF MAINE  
MICHIGAN HIGHER EDUCATION ASSISTANCE AUTHORITY  
MISSOURI DEPARTMENT OF HIGHER EDUCATION  
MONTANA GUARANTEED STUDENT LOAN PROGRAM  
NATIONAL STUDENT LOAN PROGRAM (NEBRASKA)  
NEW HAMPSHIRE HIGHER EDUCATION ASSISTANCE FOUNDATION  
NEW JERSEY HIGHER EDUCATION ASSISTANCE AUTHORITY  
NEW MEXICO STUDENT LOAN GUARANTEE CORPORATION  
NEW YORK STATE HIGHER EDUCATION SERVICES CORPORATION  
NORTH CAROLINA STATE EDUCATION ASSISTANCE AUTHORITY  
STUDENT LOANS OF NORTH DAKOTA  
OKLAHOMA GUARANTEED STUDENT LOAN PROGRAM  
OREGON STUDENT ASSISTANCE COMMISSION  
AMERICAN EDUCATION SERVICES/PHEEA  
RHODE ISLAND HIGHER EDUCATION ASSISTANCE AUTHORITY  
SOUTH CAROLINA STUDENT LOAN CORPORATION  
TENNESSEE STUDENT ASSISTANCE CORPORATION  
TEXAS GUARANTEED STUDENT LOAN CORPORATION  
USA FUNDS  
UTAH HIGHER EDUCATION ASSISTANCE AUTHORITY  
VERMONT STUDENT ASSISTANCE CORPORATION  
NORTHWEST EDUCATION LOAN ASSOCIATION (NELA)

06/26/2008

DARRICK E. ANTELL, MD, DDS, PC  
ATTN: PAYROLL  
850 PARK AVE.  
NEW YORK, NY 10021-

RE: Student Loan(s) of BRENDA BERGEN  
SSN/LOAN #: 130406702  
BALANCE: \$200,735.00  
ECMC FEDERAL TAX I.D. #: 41-1778617

## **SECOND NOTICE OF ORDER OF WITHHOLDING FROM EARNINGS**

Dear Director of Payroll:

Educational Credit Management Corporation (ECMC) previously issued an **Order of Withholding** requiring the employer to withhold a percentage of the above-mentioned debtor's wage for payment of a defaulted student loan(s). Our records indicate this company employs this debtor.

ECMC's records reflect that as of the date of this Second Notice, we have not received the wage withholding payments the **Order of Withholding** requires the employer to make.

This **Second Notice of Order of Withholding from Earnings** is issued on June 25, 2007. If you have any questions regarding the **Second Notice of the Wage Withholding** process, call ECMC at 1-800-780-7997 or (651) 221-0037.

Under Federal law, ECMC may sue any employer who fails to withhold wages after receipt of an **Order of Withholding**. If ECMC is forced to file suit, it is entitled to seek not just the amount an employer fails to withhold, but also attorney fees, costs, and punitive damages.

Unless your withholding payment is received by ECMC within thirty (30) days after the issuance of this Second Notice, ECMC must review the matter for legal action.



February 5, 2008



ECMC is an ECMC Group company.

VIA CERTIFIED MAIL

Darrick E. Antell MD DDS PC  
850 Park Ave  
New York, NY 11374-4902

RE: Order of Withholding from Earnings for Brenda Bergen


Dear Sir or Madam:

PLEASE BE ADVISED that the Educational Credit Management Corporation ("ECMC") is prepared to file a lawsuit against Darrick E. Antell MD DDS PC for failure to comply with the above-referenced Order of Withholding From Earnings ("Order"), which was sent by mail on May 1, 2007. A copy of the Order previously sent is enclosed.

Pursuant to 20 U.S.C. § 1095a and 34 C.F.R. § 682.410(b) (9), you are required to remit fifteen percent (15%) of Brenda Bergen's disposable income, or a lesser amount, if required by 15 U.S.C. § 1673. To date, notwithstanding repeated notices, you have refused to comply with the law. Accordingly, ECMC has retained local counsel and is prepared to file a lawsuit against you to recover all amounts you have failed to withhold, plus attorney fees, costs and if warranted punitive damages as authorized by 20 U.S.C. § 1095a(a)(6).

You must contact me by February 19, 2008 to make acceptable arrangements regarding the above-referenced Order. Failure to do so will result in appropriate legal action being taken against you. I look forward to hearing from you regarding the informal resolution of this matter.

Sincerely,



TROY GUNDERMAN  
Associate Attorney  
(651) 325-3252



Received ICNC 06/14/07

DARRICK E ANTELL MD DDS PC  
ATTN PAYROLL  
850 PARK AVE  
NEW YORK NY 10021

**ECMC**  
EDUCATIONAL CREDIT  
MANAGEMENT CORPORATION

ECMC is an TCMC Group company

RE Student Loan Debt

**ORDER OF WITHHOLDING FROM EARNINGS**

Pursuant to authority granted Educational Credit Management Corporation (ECMC) by Federal Law (Public Law 102-164, as amended by Public Law 109-171, 20 U S C '1095a et seq ), you, the employer of the debtor named below, are hereby ordered and directed to withhold income from the debtor's disposable pay from this employment for payment of defaulted student loan(s) as follows

DEBTOR **BRENDA BERGEN**  
9801 87<sup>TH</sup> AVE APT 3F  
REGO PARK NY 11374

SSN 130 48 6762

**Total Amount Currently Due \$199633 19**

The employer shall deduct and pay to ECMC an amount that does not exceed fifteen percent (15%) of the debtor's disposable pay for each pay period or the amount permitted by 15 U S C '1673, unless the debtor provides ECMC with written consent to deduct a greater amount. This amount shall be deducted until the amount set for above as the "Total Amount Currently Due", \*\*plus all further accrued interest, is fully paid

As the employer, you must comply with this law, which supersedes all state laws governing wage garnishment. Garnishment must begin on the first pay period following the receipt of this notice. You must respond to this notice by completing and returning the enclosed form to our office within ten (10) business days. If the employee is no longer employed by you, please indicate that on the form.

Employer is directed to pay all amounts withheld on each regular pay day, no less frequently than once each month, to

**ECMC**  
**Lockbox #7096**  
**P O. BOX 75848**  
**ST PAUL, MN 55175-0848**

**ECMC Federal Tax ID # 41-1778617**

All payments **MUST** identify the debtor and the debtor's social security number

Section 488A of the Act provides that an employer who fails to comply with a garnishment order issued under this law will be liable for any amounts that are not so withheld following its receipt, in addition to costs of suit as a result of legal action authorized under the law.

**THIS ORDER OF WITHHOLDING IS ISSUED ON May 1, 2007**

**EDUCATIONAL CREDIT MANAGEMENT CORPORATION**

**AWG**

If you fail to comply with this Order, ECMC may sue you in a state or federal court to recover any amount that you failed to withhold, as well as attorney fees, litigation costs, and at the court's discretion, punitive damages.

In the event employment is terminated, you, as the employer, are required to complete and forward a Notice of Change of Employment to our office.

If you have any questions regarding this matter, please call 1-800-780-7997 or (651) 221-0037. Please make all payments payable to ECMC and include the Social Security number of the employee on the payment.

Send all amounts withheld on each regular payday, no less frequently than once a month, to:

ECMC  
Lockbox #7096  
P.O. BOX 75848  
ST. PAUL, MN 55175-0848

Federal Tax I.D. #: 41-1778617

**EDUCATIONAL CREDIT MANAGEMENT CORPORATION**

Enclosures: Employer Acknowledgment of Wage Withholding  
Department of Education Letter listing Guarantors authorized to issue  
Wage Garnishment Withholding Orders  
Handbook for Employers  
Self-addressed and stamped envelope